HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.725 of 2001
(Old No. 7287 of 1997)

1. Prem Kashyap
   S/o Sri Wazir Chandra Kashyap
2. Subash Kashyap
   S/o Sri Wazir Chandra Kashyap
   Both R/o 54 Lunia Mohallah
   Dhamauri Village P.S. Kotwali
   District Dehradun ……Applicants

Versus

1. State of Uttaranchal
2. Rajendra Singh Bajwa, Advocate
   R/o 18 Race Course
   P.S. Dalanwala
   District Dehradun ……Respondents

Dated :- 09.03.2006

Hon'ble J. C. S. Rawat, J.

1) Heard Sri Alok Singh learned counsel for the applicants and Sri G. S. Sandhu learned A.G.A.

2) The petition under section 482 Cr.P.C. has been filed for quashing the proceedings of case No.139/1996 State Vs. Prem Kashyap & others arising out of cime No.280/1995 under section 447/506 IPC pending before the Ist Addl. Chief Judicial Magistrate, Dehradun.

3) Brief facts of the case are that on 2.8.1995 a case crime no.280/1995 under section 447/506 IPC was registered against the applicants at the police station Dalanwala, District Dehradun on the basis of the FIR dated 25.7.1995. Thereafter, the police investigated the matter and submitted the chargesheet against the applicants under section 447 IPC. Thereafter, the learned Magistrate took cognizance against the applicants under section 447 IPC on 25.1.1998. Thereafter, an application was moved before the Magistrate for recalling of the process issued against the applicants. It was alleged that no case whatsoever neither under section 447 nor under section 506 is made

out against the applicants. After hearing the parties, the learned Magistrate held that the complainant had not given any notice under section 441 IPC (U.P. Amendment Act) applicable to Uttaranchal. In absence of notice, the prosecution under section 447 is not maintainable. Perusal of the chargesheet (Annexure-5 to the petition) submitted by the I.O. reveals that there was no chargesheet under section 506 I.P.C. The I.O. had only filed the chargesheet under section 447 IPC. The Magistrate while passing the impugned order has observed that there is a prima-facie case under section 506 IPC against the applicants-accused. The learned Magistrate has not indicated in the order that what evidence was available on record with regard to the criminal intimidation. He has not given any reason as to why he was coming to the conclusion that there was a prima-facie case against the applicants under section 506IPC. Chargesheet shows that the I.O. has come to the conclusion that there was no evidence against the applicants under section 506 IPC and as such no chargesheet had been submitted under that section. Perusal of the FIR also reveals that there are vague allegations with regard to the criminal intimidation. As such, I am of view that no prima-facie case is made out against the applicants under section 506 IPC.

3) In view of the above, the cognizance order passed by the learned Magistrate is liable to be set aside. Therefore, the cognizance order and the proceedings of case No.139/1996 arising out of crime No.280/1995 are hereby quashed.

4) The petition is disposed of accordingly.

(J. C. S. RAWAT, J.)

Dated 09.03.2006